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Attorneys for Defendants

KIM EMBRY & ENVIRONMENTAL HEALTH ADVOCATES, INC.

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

B&G FOODS NORTH AMERICA, INC.,

Plaintiff,

vs.

KIM EMBRY and ENVIRONMENTAL  
HEALTH ADVOCATES, INC., acting as  
enforcement representatives under California  
Proposition 65 on behalf of the State of  
California,

Defendant.

Case No.: 2:20-cv-00526-KJM-DB

**DEFENDANTS KIM EMBRY AND  
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.'S NOTICE OF MOTION  
AND MOTION FOR SUMMARY  
JUDGEMENT**

**Hearing Date:** August 23, 2024

**Hearing Time:** 10:00 a.m.

**Location:** 3 (15<sup>th</sup> floor)

**Judge:** Hon. Kimberly J. Mueller

**Magistrate:** Hon. Deborah Barnes

**Complaint Filed:** March 6, 2020

**Trial Date:** None Set

**TO THE COURT, PLAINTIFF AND ITS ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on August 23, 2024, at 10:00 a.m., before the Honorable Kimberly J. Mueller, in Courtroom 3 (15<sup>th</sup> floor) of the above-entitled Court, located at the Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, CA 95814, a hearing will be held on Defendants Kim Embry and Environmental Health Advocates, Inc. (“Defendants”) Motion for Summary Judgement. Defendants move for summary judgment on two grounds: (1) even assuming Defendants acted under color law, there is no triable issue of material fact regarding the sham exception to the *Noerr-Pennington* doctrine; and (2) Defendants are not state actors.

Pursuant to Civil Standing Order ¶ 4(A)(a), the undersigned counsel certifies that Defendants exhausted meet and confer efforts prior to filing this motion. While the parties have routinely discussed each other’s claims and defenses throughout the 4 years of litigation, Defendants’ counsel engaged in a specific meet-and-confer teleconference with Plaintiff’s counsel regarding the procedural and substantive issues of this motion. Plaintiff refused to dismiss its lawsuit, necessitating the filing of this dispositive motion.

Pursuant to Civil Standing Order ¶ 4(A)(d), the undersigned counsel certifies the parties are not actively engaged in settlement discussions.

Respectfully Submitted,  
Dated: July 19, 2024

**NICHOLAS & TOMASEVIC, LLP**

By: /s/ Jake W. Schulte  
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